

ASUC Judicial Council

Summary Judgment

Moscato, et al vs. Yu

On this date, the Tenth of April, Two Thousand and Twelve

By Associate Justice Suneeta Israni, with whom
Chair Erica Furer, and
Associate Justices Hinh Tran, Scott Lara, Abraham Escareno,
Stephanie Chamberlain, and Ryan Mattison join

On Wednesday, May 2nd, 2012, the Judicial Council accepted the charges filed by Spokesperson Myles Moscato, Attorney General Deepti Rajendran, and President Vishalli Loomba against Defendant Lynn Yu, campaign manager for the V.O.I.C.E. Referendum, for allegedly violating Title IV Section 17.4.3, Title IV Section 7.5.1, and Section 1 Clause L of the ASUC Bylaws. After comprehensive review and extensive deliberation, the Council rules that there is not sufficient statutory basis to order the disqualification of the V.O.I.C.E Referendum.

I. Introduction of the Arguments

Plaintiffs demonstrated that according to Title IV Section 7.5.1 of the ASUC Bylaws, the V.O.I.C.E Referendum is subject to the policies of the ASUC Constitution and By-Laws and additionally, to the policies of the University of California, Office of the President (UCOP).¹

Plaintiffs also demonstrated that the ASUC is constrained only by the Chancellor's responsibilities pertaining to University of California policies that apply to Campus Activities, Organizations, and Students.² Plaintiffs further allege that the V.O.I.C.E Referendum had violated UCOP policy by seeking to implement a new compulsory student fee that would fund the Daily Californian despite the fact that The Daily Californian is a non-University organization, and as such cannot be supported by a referendum-based student fee.³

¹ Title IV Section 7.5.1 of the ASUC Bylaws states that "Unless otherwise stated in the Constitution or By-laws, (or in the case of student fee questions, applicable to University Policies), a favorable vote of a majority of the votes cast for and against the proposition shall be necessary for adoption of the proposition."

² Section 1 Clause L of the ASUC Commercial Activities Agreement states, "With respect to its role as the student government, the ASUC has maximum operating and decision-making discretion constrained only by the Chancellor's responsibility under the "University of California Policies Applying to Campus Activities, Organizations, and Students," and his/her obligation to ensure overall fiscal soundness, a safe and healthy environment, and fulfillment of all conditions outlined in specific agreements between the University and the ASUC on the UCB campus."

³ The University's "Policy on Registered Campus Organizations" and "Policy On Compulsory Campus-Based Student Fees" under Section 70.90 and 87.00 (respectively) Transfer of Compulsory Campus-Based Student Fees to Non-University Entities state, "The referendum process set forth in Section 82.00 of these Policies shall not be available either to establish a new compulsory campus-based student fee, or to lock in an increase to an existing such fee, for the purpose of supporting any non-University organization, program, or activity."

Plaintiff Moscato urged the Judicial Council to disqualify the referendum on the basis of mismanagement or unpunished violations believing that the lack of punishment for these violations substantially affected the outcome of the of the election.^{4 5}

Plaintiff Moscato also believed that the absence of a required Memorandum of Understanding in appropriating the V.O.I.C.E initiative prior to its passage withheld pertinent information and thus, mislead voters.

Defendant contends that although The Daily Californian is recognized by the University as a student group, it is not affiliated with the ASUC and thus, is not required to adhere to the ASUC Commercial

Activities Agreement. Defendant further responds by claiming that the V.O.I.C.E Initiative did not violate Sections 70.90 or 82.00 of UCOP policy as The Daily Californian is at least in part recognized as a student organization by the Center for Student Leadership.

Defendant also claims that UCOP does not recognize this issue as a matter of policy violation but rather mere ambiguity. Defendant provided evidence supporting this fact by including a statement issued by UCOP liaison Laurent Heller stating that she believed that the issue surrounding The Daily Cal's affiliation would have been resolved through a Memorandum of Understanding and required but only if the referendum had passed.

Lastly, Defendant argues that the issue of the prosecution of campaign violations was in the process of being resolved as an agreement had been reached during a settlement conference. Due to the issuance of the Executive Order, however, the parties had agreed to drop the charges after the Referendum was invalidated altogether with the understanding that the charges could be re-filed if the Executive Order was overturned.

The Judicial Council's Examination of the Arguments

In our first consideration, the Judicial Council found that mere ambiguity is not sufficient to warrant disqualification of a referendum. The statement issued by UCOP Liason Laurent Heller, submitted as evidence by the Defendant, demonstrated that both UCOP and The Daily Cal had already

⁴ A charge sheet filed by Elizabeth Kopaskie on April 8, 2012 against the VOICE referendum pertaining to campaign violations of Title IV, Article XII, Section 12.3, Clause 6; Title IV, Article XII, Section 12.6, Clause 1, Title IV, Article XII, Section 12.6, Clause 4, Title IV, Article XII, Section 12.6, Clause 8 was dismissed by the Judicial Council under the grounds that an Executive Order was issued by President Vishalli Loomba on April 11, 2012 voiding the V.O.I.C.E. referendum altogether.

⁵ Title IV Section 17.4.3 of the ASUC Bylaws states "If the ASUC Judicial Council rules that there was mismanagement, or that there was an unpunished violation, the ASUC Judicial Council may void the election on the grounds that the mismanagement or the unpunished violation substantially affected the outcome of the election."

discovered an appropriate resolution within the bounds of UCOP policy. (Heller believed that the drafting of a Memorandum of Understanding once the Referendum had passed would suffice.) It must also be noted with utmost sincerity that it is not within the Judicial Council's jurisdiction to interpret UCOP policy and by that same line of reasoning, to create boundaries, restrict, or enforce UCOP policy - especially when the parties in this case had discovered an appropriate and legal course of remedy. Even if the Council possessed the authority to do so, the Justices still find that of all the evidence submitted, the evidence failed to meet the high burden of proof standard to demonstrate that the V.O.I.C.E Referendum had indeed violated UCOP Policy, ASUC By-Laws, and/or the ASUC Constitution.

In our second consideration, the Council found no statutory evidence to support Plaintiff's claim that the absence of a Memorandum of Understanding led the V.O.I.C.E Referendum to withhold pertinent information and mislead voters. This claim does not provide any proof that the existence of a Memorandum of Understanding is required in order for a Referendum to be on a ballot. Furthermore, as discussed in the first consideration, there was an appropriate remedy to reconcile these issues which was agreed upon by the proponent of the V.O.I.C.E. Referendum and UCOP. Therefore, it is a false assumption that a Memorandum of Understanding is required for a Referendum to be placed on the ballot or even to be mentioned for voters.

In our final and third consideration, the existence of unpunished alleged campaign violations in this case are not sufficient grounds for ordering disqualification of a referendum. This is due to the evidence provided by the Defendant, which indicates that a pending settlement would have issued only two censures. As five are needed in order to qualify for disqualification, there is no merit to the claim that the unpunished violations would have disqualified the referendum and changed the results of the election. Although charges were dropped, they were done so on the basis that charges could be re-filed if the Executive Order had been overturned. No other cases had been filed and even if they had been, Council believes that the aforementioned evidence illustrates that two censures would have not negatively harmed the election results.

Conclusion and Decision

Based upon the considerations that 1) an appropriate method had been discovered to resolve policy ambiguities, 2) there is no statutory evidence to support a claim that relies on false assumptions, and 3) that even if charges had been re-filed, there is evidence proving that the charges would have only resulted in two censures, the Judicial Council believes that none of these considerations satisfy grounds for disqualification of a referendum.

The Council does recognize, however, the ambiguity outlined in the referendum process in the ASUC By-Laws and urges the Senate to re-write the By-Laws to clarify the referendum process. The Justices recognize that this issue has placed many students in the state of distress and believe that

this matter deserves utmost priority to prevent discrepancies, such as the one we have reviewed today, in the future.